Supreme Court, U. S.
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No. 76-841

In the

Supreme Court of the United States

OCTOBER TERM, 1976

STATE OF ILLINOIS;
Clark County, Illinois;
Crawford County, Illinois;
Lawrence County, Illinois;
Wabash County, Illinois;
City of Robinson, Illinois;
City of Mount Carmel, Illinois;
Greater Wabash Regional
Planning Commission,
Petitioners,

v.

CONSOLIDATED RAIL CORPORATION,
Respondent.

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Petitioners (hereinafter the "State of Illinois") submit the following reply to ConRail's Brief in Opposition to Petition for Writ of Certiorari (hereinafter "Br. Opp.").

ARGUMENT

I. The Special Court Exceeded the Carefully Defined Limits of Its Jurisdiction.

ConRail contends that this issue is not sufficiently important to merit this Court's attention since it is presented in "a highly individualized factual context." (Br. Opp. 14) The decision of the Special Court, however, rests on its broad reading and application of the statute conferring jurisdiction upon it. As such, it will serve in the future as the basic precedent and standard for the Special Court's jurisdiction in all cases in which its jurisdiction is disputed.

There will undoubtedly be many such cases since the view of the Special Court and ConRail is that any case dealing with a matter given "explicit and extended treatment" by the United States Railway Association (USRA) in the Final System Plan constitutes a case within the Special Court's jurisdiction over challenges to the legality of any action taken, or any failure to take appropriate action, by the USRA. (Br. Opp. 13) Such a reading of the statute effectively repeals the carefully defined limits placed on the Special Court's jurisdiction by Congress. (See Petition at pp. 9-11.)

Another factor which makes this case worthy of full review by this Court — and one completely ignored by ConRail — is the usurpation by the Special Court of the authority of the Interstate Commerce Commission (ICC) as well as the express jurisdiction of the federal courts. ConRail cannot deny that if the Special Court had refused to exercise jurisdiction in this case and the District Court

decision had been upheld on appeal, then the Louisville & Nashville (L & N) trackage could not have been used by ConRail until ICC approval was secured. Thus, ConRail's argument that any error in the Special Court decision is tolerable since it would be consistent with the general purpose of Congress, cannot be accepted. The Rail Acts exempt a transfer of operating rights from ICC review only if all required steps under those Acts were taken. Since ConRail failed to meet all those requirements, it would have to present its case to the expert agency overseeing railroad operations before undertaking use of the L & N trackage.

ConRail argues now that the State of Illinois somehow failed to take appropriate action. According to ConRail, the State of Illinois should have sought a designation of the excluded portion of the Cairo Branch after the execution of the ConRail-L & N trackage agreement. ConRail's position conflicts, however, with its other argument that the State of Illinois has implicitly challenged the failure of the USRA to make such a designation.

Quite apart from that inconsistency, ConRail's argument is a transparent attempt to shift the Court's focus from its failure to satisfy the requirements of the Rail Acts. Nothing in those Acts required the State of Illinois to seek such action from the USRA, and any such attempt would have collided with ConRail's claim that the ConRail-L & N agreement met all the requirements of the Rail Acts. Instead, the State of Illinois took the appropriate course of challenging ConRail's contention in federal court. If successful, the State of Illinois would have contested any subsequent ConRail effort to obtain ICC approval. If the ICC did not give its approval, ConRail

would have been precluded from using the L & N trackage by the expert agency charged with responsibility for such decisions.

II. The District Court Decision Was Entitled to Res Judicata Effect in the Special Court.

ConRail's argument with respect to the *res judicata* effect of the United States District Court decision is the conclusory statement that *Kalb* v. *Feuerstein*, 308 U.S. 433 (1940), controls the question, as the Special Court decided. ConRail makes no attempt, however, to discuss *Kalb* on its facts and to demonstrate how this case fits within its holding.

Kalb is clearly distinguishable. In that case, this Court found that the statute in question was "self-executing" in barring any courts except the bankruptcy courts from exercising jurisdiction over farmer-debtors and their property. The exclusive jurisdiction conferred upon the bankruptcy courts was complete and without exception over the subject matter involved. Moreover, in *Kalb* the jurisdictional issue had not been fully litigated in the first forum. 308 U.S. at 439-441, 443. *See Durfee* v. *Duke*, 375 U.S. 106, 114 n.12 (1963). Here the District Court made a decision on its jurisdiction after extensive briefing and argument.

In contrast to the statute in *Kalb*, the Rail Acts carefully limit the Special Court's jurisdiction to specific categories of cases, and there is no provision in those Acts which can be viewed as a "self-executing" exclusion of action by other courts in all cases involving the transfer or operations of railroad property under the Rail Acts.

Since *Kalb* does not apply to this case, the principles of *Stoll* v. *Gottlieb*, 305 U.S. 165 (1938), control and require reversal of the Special Court decision:

> "When an erroneous judgment, whether from the court of first instance or from the court of final resort, is pleaded in another court or another jurisdiction the question is whether the former judgment is res judicata. After a Federal court has decided the question of the jurisdiction over the parties as a contested issue, the court in which the plea of res judicata is made has not the power to inquire again into that jurisdictional fact. We see no reason why a court, in the absence of an allegation of fraud in obtaining the judgment, should examine again the question whether the court making the earlier determination on an actual contest over jurisdiction between the parties, did have jurisdiction of the subject matter of the litigation." *Id.*, at 172 (footnotes omitted).

The Special Court's clear violation of the settled law of *res judicata* requires corrective action by this Court either through plenary review together with the jurisdictional issue or by summary reversal.

III. The Special Court Improperly Applied the Standards for a Preliminary Injunction.

ConRail relies primarily upon Section 209(g) of the 1973 Rail Act, as amended by Section 602(b) of the 1976 Rail Act, in defending the injunctive relief granted by the Special Court. That section, however, was clearly designed for emergency situations in which immediate Special Court action was required to protect the reorganization process. Here ConRail fully contested the issues, first in the District Court and then on appeal,

before seeking Special Court action under Section 209(g). ConRail's five-month delay in seeking a Special Court stay of proceedings in the District Court and Court of Appeals demonstrates the implausibility of ConRail's contention that such relief is necessary to avoid the impairment of the effective implementation of the Rail Acts, which is the standard for relief under Section 209(g).

ConRail makes no attempt to justify or explain the Special Court's decision as to the timeliness of the ConRail-L & N agreement under the Rail Acts. Admittedly, such a defense would be difficult given ConRail's inconsistent position on the question in the Special Court and the completely unconvincing nature of the Special Court's decision.

Quite apart from the other errors made by that Court in issuing the relief,* its decision on the timeliness point itself justifies summary reversal by this Court. While this Court does not generally expend its time in reviewing lower court decisions for abuse of discretion, the Special Court's unjustified assertion of authority can be reviewed only by this Court.

* See Petition at pp. 18-22.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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